

Pursuant to Ind.Appellate Rule 65(D),
this Memorandum Decision shall not be
regarded as precedent or cited before
any court except for the purpose of
establishing the defense of res judicata,
collateral estoppel, or the law of the
case.

ATTORNEY FOR APPELLANT:

JEFFREY D. STONEBRAKER
Chief Public Defender
Jeffersonville, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

J.T. WHITEHEAD
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

STAR GENTRY,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 10A04-0610-CR-595
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE CLARK SUPERIOR COURT
The Honorable Jerome K. Jacobi, Judge
Cause No. 10D01-0509-FB-83

June 26, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Star L. Gentry appeals her conviction of Neglect of a Dependent,¹ a class B felony, presenting the following restated issue for review: Did the trial court err in denying Gentry's motion for judgment on the evidence?

We affirm.

The facts favorable to the conviction are that at about 4:45 p.m. on September 8, 2005, Gentry took her three-year-old daughter, S.G., to the Clark Memorial Hospital Emergency Room. Nurse Teresa Martin was working at the time and was the first to treat S.G. When S.G. was brought to her, Martin noted that S.G.'s hands were wrapped in a dirty t-shirt. When Martin unwrapped S.G.'s hands, she observed that both hands were red from obvious burn injuries. Martin described S.G.'s pain level as "excruciating," *Transcript* at 33, and ten on a ten-point scale. Gentry did not divulge to Martin how the injuries occurred, but told Martin that at about noon, she had applied aloe vera to S.G.'s injuries and gave her Tylenol. The child began relaxing only after pain medications that she was given began to take effect. Because of the severity of the burns, and the fact that Clark Memorial Hospital had no burn unit, S.G. was transferred to Kosair Children's Hospital.

At about 5 p.m., someone at Clark Memorial Hospital had notified Andrea Martin, a family case manager and investigator for Child Protective Services, about the situation involving S.G. Andrea arrived at Kosair around 6:30 and visited S.G. She found S.G.

¹ Ind. Code Ann. § 35-46-1-4 (West, PREMISE through 2006 Second Regular Session).

lying on her back and waiving her hands. Andrea observed that skin was falling off of S.G.'s hands. Andrea spoke with Gentry, who claimed that S.G. was accidentally burned by contact with hot water. She claimed that the burns occurred at 9 a.m., and later changed that to 10:00 a.m. Also, Gentry claimed that she took S.G. to the hospital at 2:00 p.m., when in fact it was actually 4:45 p.m. Andrea contacted Detective Charles Thompson of the Jeffersonville Police Department and reported her suspicion that there was a case of child neglect at Kosair. Detective Thompson arrived at Kosair at approximately 8:00 p.m.

The detective observed S.G. and spoke with the attending physician about S.G.'s injuries. The detective shared the doctor's opinion that S.G. had been abused. He then spoke with Gentry and asked what had happened. According to Detective Thompson, Gentry "went in [sic] to tell me the story and the times and the dates become [sic] confused for her and she was confusing me with as many dates and times she was coming up with." *Id.* at 9. Detective Thompson told Gentry he knew she was lying, and Gentry began to cry. She admitted that she had been lying, and explained that her boyfriend, Rudy Caldwell, had caused the injuries to S.G.'s hands.

Caldwell was summoned to Kosair and directed to bring Gentry's other child, who was then in his care. Caldwell complied, and was interviewed there by Detective Thompson. Caldwell told the detective that the injuries had occurred that morning, which conflicted with Gentry's earlier claim that the injuries were several days old. When confronted, Gentry admitted that the injuries had indeed occurred that morning.

Gentry later told Detective Thompson that she knew she was wrong in not taking S.G. for treatment sooner than she did.

On September 16, 2005, Gentry was charged with neglect of a dependent as a class B felony and conspiracy to commit perjury as a class D felony. The State later dropped the perjury charge. Gentry was convicted of the lesser included offense of neglect of a dependent as a class D felony following a jury trial, and sentenced to eighteen months in prison.

Following the presentation of evidence at trial, Gentry's counsel submitted a motion for judgment on the evidence. Gentry appeals the denial of that motion. We review the denial of a motion for judgment on the evidence utilizing the same standard that is used to review a challenge to the sufficiency of the evidence. *Jones v. State*, 472 N.E.2d 1255 (Ind. 1985). When considering a challenge to the sufficiency of evidence supporting a conviction, we neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). This review "respects 'the jury's exclusive province to weigh conflicting evidence.'" *Id.* at 126 (quoting *Alkhalidi v. State*, 753 N.E.2d 625, 627 (Ind. 2001)). Considering only the probative evidence and reasonable inferences supporting the verdict, we must affirm "if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.'" *McHenry v. State*, 820 N.E.2d at 126 (quoting *Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)).

To sustain a conviction of class D felony neglect of a dependent, the State must prove beyond a reasonable doubt that the defendant knowingly placed a dependent in a situation that endangered the dependent's life or health. I.C. § 35-46-1-4(a)(1). The danger contemplated by I.C. § 35-46-1-4 must be "actual and appreciable." *State v. Downey*, 476 N.E.2d 121, 123 (Ind. 1985). Our Supreme Court has further clarified the nature of the evidence that will sustain a conviction for neglect of a dependent: "When there are symptoms from which the average layperson would have detected a serious problem necessitating medical attention, it is reasonable for the jury to infer that the defendant knowingly neglected the dependent." *Mitchell v. State*, 726 N.E.2d 1228, 1240 (Ind. 2000).

The evidence revealed that sometime in the morning of September 8, 2005, Gentry retrieved S.G. from Gentry's boyfriend, who had been watching S.G. while Gentry was at work. S.G.'s hands were wrapped in cloths and the boyfriend informed Gentry that S.G.'s hands had been burned in scalding water. Gentry took S.G. home and applied aloe vera to S.G.'s hands. Gentry did not seek medical treatment for S.G. until late in the afternoon, sometime around 5:00 p.m. When they arrived at the hospital, S.G.'s hands were wrapped in "an old dirty t-shirt" and she was in excruciating pain, which nurse Martin described as a ten on a ten-point scale. *Appellant's Appendix* at 31. Martin described the skin on S.G.'s hands as "burned off." *Id.* at 32. When Andrea Martin arrived at the hospital a few minutes later, she observed that S.G. was lying on a table with her hands in the air, "and she was just waving them back and forth like this. Her

hands were just severely burned on top. Very bad, skin coming off on the tops of her hands.” *Id.* at 60-61. These symptoms would have apprised the average layperson that a serious problem existed that necessitated medical attention. Thus, it was reasonable for the jury to infer that Gentry knowingly neglected S.G. *See Mitchell v. State*, 726 N.E.2d 1228. Therefore, the trial court properly denied Gentry’s motion for judgment on the evidence.

Judgment affirmed.

BAKER, C.J., and CRONE, J., concur.